

LBNL – PROCUREMENT STANDARD PRACTICES

Section: 43 Contract Modifications
Subject: 43.1 Modifications and Changes

PURPOSE: This standard practice (SP) describes the procedure for issuing and documenting changes and modifications to subcontracts.

POLICY: All changes and modifications to any subcontract shall be properly executed in accordance with the following procedures. Care shall be taken to avoid the disproportionate growth of subcontract costs due to the addition of work not originally contemplated when the subcontract was awarded.

SCOPE: This SP applies to all subcontracts.

DEFINITIONS:

Administrative Change An administrative change is a unilateral, written subcontract change that does not affect the substantive rights of the parties.

Bilateral Modification A bilateral modification is a mutually agreed upon subcontract modification that is executed by the subcontractor and the Laboratory. Bilateral modifications are used to make negotiated equitable adjustments resulting from the issuance of a change order, definitize letter subcontracts, and reflect other agreements of the parties modifying the terms of a subcontract.

Cardinal Change A cardinal change is a change that is beyond the scope of the subcontract and thus cannot be ordered by the Laboratory under the *Changes* clause.

Change Order A change order is a written order directing the subcontractor to make a change under the subcontract as authorized by the *Changes* clause. A change order does not require the subcontractor's consent.

***Changes* Clause** The *Changes* clause allows the Laboratory to issue a change order within the general scope of work and under limited criteria. These criteria vary between subcontract types. A *Changes* clause is included in all sets of General Provisions.

Equitable Adjustment An equitable adjustment is a fair price adjustment under a subcontract clause for changed work, including an adjustment in cost and/or fee; a change in delivery schedule, if appropriate; or a change in any other affected term of the subcontract.

General Scope of the Subcontract The general scope of a subcontract is all work that was fairly and reasonably within the contemplation of the parties at the time the subcontract was executed.

Modification A modification is any written change to the terms of a subcontract.

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Supplemental Agreement

A supplemental agreement is a subcontract modification that is accomplished by the mutual action of the parties.

Unilateral Modification

A unilateral modification is a subcontract modification that is executed only by the Laboratory. Unilateral modifications are used, for example, to make administrative changes; issue change orders; make changes authorized by clauses other than a *Changes* clause; and issue termination notices.

Successive modifications/changes to a subcontract shall be sequentially numbered. The type of modification issued, whether unilateral or bilateral, holds no significance with regard to the modification number assigned. However, the type of modification being issued (e.g., administrative change, change order, supplemental agreement) shall be clearly identified.

PROCEDURES:

General Rules

The modification shall clearly identify the relevant subcontract requirement being changed, including:

- Subcontract provision being changed;
- Authority for the change;
- Summary of the specific information being changed (for example, the dollar values stated in the provision or the requirements as currently stated);
- Specific revised or modified subcontract language; and
- Time frame or specific dates for response or action, if appropriate.

Several changes may be issued in one modification.

Evaluating Change Requests

Change requests shall be evaluated, reviewed and coordinated for probable cost, benefit to the Laboratory, and other consequences.

Requests for changes and modifications to subcontracts shall be scrutinized to ensure that such changes are within the general scope of the subcontract. The number of change orders or modifications is not as important as the cumulative magnitude and quality of the changes in determining whether or not a change would be within the scope of the subcontract.

Availability of Funds

A subcontract modification that causes or will cause an increase in subcontract price or funding, unless sufficient funds are determined to be available or unless subcontract performance is conditioned by a limitation of cost or funds, will not be issued.

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Change Orders

Change orders may be issued when the change is authorized by the *Changes* clause and there is insufficient time to negotiate a supplemental agreement covering the desired change. The subcontractor will normally commence performance upon receipt of the change order.

Pricing and Negotiating Changes — The subcontractor must submit a detailed proposal for equitable adjustment in accordance with the *Changes* clause. The proposal must be reviewed for negotiation of an equitable adjustment and a fair and reasonable price. Pricing a change should be based solely upon the effects of the change and should not be used as a basis for repricing the subcontract.

Definitizing Change Orders — Upon negotiation of the change order, a supplemental agreement detailing the revisions and authorizing any mutually agreed upon equitable adjustments to the subcontract shall be prepared and issued. The supplemental agreement must be executed by the subcontractor and the Laboratory. Subcontract documentation must be appropriate for the value of the change order. To the extent possible, all elements of the change order must be definitized prior to issuing subsequent change orders or modifications.

Administrative Changes

A unilateral modification may be issued for an administrative change. Such changes may include, but are not limited to,

- A change in the Laboratory's technical representative, if named in the subcontract;
- A change of address, including the billing/invoicing address; or
- Incorporation of incremental funding up to the negotiated value of the subcontract.

Verbal Orders

Modifications or changes to verbal orders may be authorized verbally.

Authority to Issue Modifications and Change Orders

Modifications and change orders shall be authorized by a person with the appropriate procurement authority (see SP 1.2, *Delegation of Procurement Authority*).

Documentation

The basis for and negotiation of any written or verbal modification or change order must be documented in the subcontract file.

RESPONSIBILITIES:

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Procurement Specialist

The procurement specialist shall:

- Ensure that only change orders within the general scope of the subcontract are authorized;
- Avoid out-of-scope changes;
- Prepare and issue subcontract modifications;
- Negotiate equitable adjustments, as warranted; and
- Document the subcontract file to substantiate all subcontract modifications.